

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Zhongxin GE et al.

Application No.: 10/594,432

Filed: September 26, 2006

For: PEGYLATION AND
HYDROXYLATION OF
TRIMETALLIC NITRIDE
ENDOHEDRAL
METALLOFULLERENES

Group Art Unit: Unassigned

Examiner: Unassigned

Confirmation No.: 2929

**PETITION FOR FILING APPLICATION BY LESS THAN
ALL THE INVENTORS PURSUANT TO 37 C.F.R. § 1.47(a)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby submit this Petition to the Commissioner to accept the filing of the above-identified patent application by less than all of the joint inventors pursuant to 37 C.F.R. § 1.47(a).

The joint inventors of this application are Zhongxin Ge, J. Paige Phillips and Harry C. Dorn. It is requested that the inventors Zhongxin Ge and J. Paige Phillips be permitted to make a declaration of inventorship in connection with the above identified U.S. patent application on behalf of Harry C. Dorn for the following reasons.

Joint inventor Harry C. Dorn has refused to sign the Declaration. The other inventors, Zhongxin Ge and J. Paige Phillips have signed the Declaration and a copy of the partially executed Declaration is enclosed. Accordingly, this Petition is being

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submitted under 37 C.F.R. § 1.47(a), and pursuant to M.P.E.P. §§ 409.03, 409.03(a), and 409.03(d), sets forth the following:

- (A) A declaration by the available inventors, Zhongxin Ge and J. Paige Phillips, on their own behalf and on behalf of the non-signing inventor, Harry C. Dorn (as evidenced by the signature block of Harry C. Dorn being left blank per M.P.E.P. § 409.03(a))
- (B) This Petition is based on proof of facts showing that the non-signing inventor, Harry C. Dorn, refuses to sign the Declaration. This application was filed in the U.S. Patent and Trademark Office by the undersigned on September 26, 2006 without an executed Declaration. On November 14, 2007, copies of the application and a Declaration for execution by Harry C. Dorn were sent by overnight courier to John P. Fishwick, Jr. at Lichtenstein Fishwick & Johnson PLC, attorney for Harry C. Dorn. On January 8, 2007, Mr. Aaron S. Hullman, who at the time was Vice President and General Counsel for Luna Innovations Incorporated (Assignee) received a letter from John P. Fishwick, Jr. indicating that David O. Williamson, Esq. was now representing Harry C. Dorn. On May 11, 2007, Mr. Hullman sent a certified letter to Mr. David O. Williamson enclosing a copy of the application as well as a Declaration for execution by Harry C. Dorn. On July 16, 2007, a further letter was forwarded, via Federal Express, to Mr. Williamson enclosing a duplicate package as was sent on May 11, 2007. After a diligent effort to obtain the signature from Harry C. Dorn, a signed sworn Statement of Facts by Mr. Aaron S. Hullman, setting forth steps taken

to obtain execution by Harry C. Dorn, with accompanying documentary evidence, fully describes his firsthand knowledge of the exact facts relied upon to establish that a diligent effort was made.

- (C) The last known personal mailing address of the non-signing inventor, Harry C. Dorn, is as follows:

Dr. Harry C. Dorn
101 Fincastle Drive
Blacksburg, Virginia 24060

The last known mailing address of the attorney for Harry C. Dorn is as follows:

David O. Williamson
302 Washington Avenue, S.W.
Roanoke, Virginia 24016-4312

Despite reasonable efforts to have Harry C. Dorn execute the above-identified Declaration, Dr. Dorn has not returned the executed Declaration and the comments and conduct of his attorney, Mr. Williamson, constitute a refusal of Dr. Dorn to execute the Declaration (as evidenced by a failure to return an executed Declaration). It is submitted that the requirements of 37 C.F.R. § 1.47(a) have been satisfied and this Petition should therefore be granted.

A Statement of Facts, the fee required by 37 C.F.R. § 1.17(g) of \$200.00, and a Declaration signed by the remaining joint inventor are submitted herewith. The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment to Deposit Account No. 02-4800. This

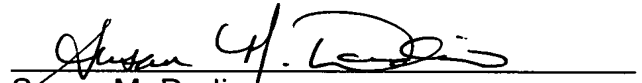
paper is submitted in duplicate. Any questions regarding this Petition should be directed to the undersigned at the telephone number set forth below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: November 16, 2007

By:


Susan M. Dadio
Registration No. 40,373

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620



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)
) Group Art Unit: Unassigned

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) Examiner: Unassigned

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) Confirmation No.: Unassigned

STATEMENT OF FACTS UNDER 37 C.F.R. §1.47(a)

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Aaron S. Hullman, hereby declare as follows:

1. I am currently an attorney with the law firm of Latham & Watkins, LLP.

From October 2005 to August 2007, I was Vice President and General Counsel of Luna Innovations Incorporated. Luna Innovations Incorporated is the assignee of the above-captioned application. As Vice President and General Counsel, I was an authorized representative of Luna Innovations Incorporated.

2. Harry C. Dorn, Ph.D., a named inventor of the above-captioned patent application, was employed by Luna Innovations Incorporated during the time of his contribution to the invention described and claimed in the above-captioned application.

3. Dr. Dorn is no longer employed by Luna Innovations Incorporated.

4. Dr. Dorn is represented by an attorney with respect to certain matters concerning Luna Innovations Incorporated. Therefore, subsequent to filing the

above-captioned application, a letter was prepared and a copy of the application (specification, drawings, claims and Declaration) was sent on November 14, 2006 to Dr. Dorn through his attorney at that time, John P. Fishwick, Jr., at Lichtenstein Fishwick & Johnson PLC, Liberty Trust Building, 101 S. Jefferson Street, Suite 400, Roanoke, Virginia 24011. Exhibit 1.

5. On January 8, 2007 I received a letter from Mr. Fishwick, Jr. indicating that all future correspondence to Dr. Dorn should now be sent to his newly appointed counsel, Mr. David O. Williamson. Exhibit 2.

6. On May 11, 2007, I prepared and sent a certified letter to Dr. Dorn, through his newly appointed counsel, Mr. David O. Williamson, 302 Washington Avenue, S.W., Roanoke, Virginia 24016-4312, enclosing a copy of the application and Declaration for execution by Dr. Dorn. Exhibit 3.

7. On July 16, 2007, I sent a further letter, via Federal Express, to Mr. Dorn's attorney, David O. Williamson, at the address listed above. Exhibit 4.

8. On or around July 18, 2007, I conducted a telephone call with Mr. Williamson regarding Dr. Dorn's execution of the Declaration, during which time Mr. Williamson suggested that Dr. Dorn did not intend to execute such Declaration.

9. Despite a bona fide attempt to have Dr. Dorn execute and return the executed copy of the Declaration for the above-identified application, including multiple deliveries of the application to Dr. Dorn's attorneys and a follow-up telephone discussion with Dr. Dorn's attorney, Dr. Dorn has not returned the executed Declaration.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be

true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 10001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 10/31/07

By: A. S. Hullman
Aaron S. Hullman